IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.319 OF 2007

Sandip Vasant Koli and Anr. ...Appellants
vs.
Ganpati Mahadev Shinde & Ors. ...Respondents

Mr.P.D.Dalvi for the Appellants
Mr. Prashant Kulkarni for Respondent No.1.

CORAM: A.S.OKA,J.
DATE : DECEMBER 5,2007.

P.C.:

1. The Appellants are the original defendant Nos.3 and 4. The first Respondent is the original plaintiff. The first Respondent filed a suit for specific performance of the agreement for sale executed by the second and third Respondents (first and second defendants). The agreement for sale was executed on 31st May 1991 where price was fixed at the rate of Rs.46,000/- per acre. According to the case of the first Respondent earnest money of Rs.17,000/- was paid and by end of December 1991 a total amount of Rs.31,000/- was paid by the first respondent to the second and third Respondents. The present Appellants are the purchasers of the suit property from the second and third Respondents and they have purchased the suit property by a sale deed in the year 1995.

2. Various contentions were raised by the Appellants as well as second and third Respondents by filing their respective written statements.

3. Though the trial court accepted the fact that the

agreement for sale dated 31st May 1991 was executed by the second and third Respondents in favour of the first Respondent and the first respondent had paid a sum of Rs.31,200/- to the second and third Respondents, relief of specific performance was denied on the ground that the first Respondent has not shown readiness and willingness. The trial court held that the present Appellants had failed to prove that they were bonafide purchasers. However, the trial court held that the said transaction between the Respondent Nos.2 and 3 in favour of the Appellants was legal as the same was not challenged by the first Respondent. Therefore, the trial court proceeded to pass a decree for refund of consideration along with interest. In the Appeal preferred by the first Respondent, the Appellate Court has passed a decree for specific performance.

4. The submission of the learned Advocate for the Appellants is that the sale deed was to be executed within a period of six months from 31st May 1991 and the suit was belatedly filed by the first Respondent in the year 1996. His first submission is that the suit was barred by limitation. The second submission is that no declaration has been prayed for the by the first Respondent as regards the sale deed executed by the first Respondent in favour of the Appellants. He submitted that the Appellants are bonafide purchasers and therefore they are not bound by the suit agreement.

5. The learned Advocate for the first Respondent raised an

objection that the finding recorded by the trial court that the Appellants are not bonafide purchasers was not challenged by the present Appellants by preferring an Appeal.

6. I have given careful consideration to the submissions of the Advocates for the parties. The objection raised by the first Respondent has no merit. There was no decree passed against the Appellants by the trial court and the money decree was passed against the second and third Respondents. Therefore, there was no occasion for the Appellants to prefer an Appeal.

7. The finding of the Courts below is that the appellants have failed to prove that they were bonafide purchasers. The said finding is based on admitted position that though a case is made out by the Appellants that before acquiring the suit property, a public notice was published by them, a copy of the said public notice was not produced by the Appellants. In fact, a witness examined by the Appellants could not even disclose the name of the newspaper in which the said notice was published. There is a finding of fact that the witness examined by the Appellants admitted in his cross examination that the Appellants had knowledge that the second and third Respondents had received a sum of Rs.17,000/- from the first respondent. Therefore, no fault can be found with the concurrent findings recorded by the courts below that the Appellants have failed to prove that they are the bonafide

purchasers.

8. In so far as readiness and willingness is concerned, there is a finding recorded by both the courts below on the basis of the documentary evidence on record that total consideration of Rs.31,200/- was received by the second and third Respondents by December 1991 and only a meagre amount of Rs.1690/- remained to be paid by the first Respondent. Thus, a substantial part of the agreed consideration was paid within a period of six months from the date of execution of the agreement which according to the Appellants was the essence of the contract.

9. It must be noted here that the sale deed was to be executed after the second and third Respondents produced 'No due certificate' from the bank as they had created a charge on the suit property in favour of the said bank. As the second and third Respondents have not lead any evidence, the Appellate Court has found that there was nothing on record to show that the said Respondents had communicated to the first Respondent that 'No due certificate' was issued by the bank.

10. In the circumstances, the Appellate Court has held that the bar of limitation will not be attracted. It was held that time of six months was not the essence of the contract. There is no error in the decree for specific performance passed by the Appellate Court. No substantial question of law arises.

Second Appeal is dismissed with no order as to costs.

JUDGE